IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2708 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ICICI BANK LTD., THROUGH MR. LALIT VUYA - Applicant(s)
Versus
VIJAY RAYSANGBHAI THAKOR & 1 - Respondent(s)

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Appearance :
MR CR ABICHANDANI for Applicant(s) : 1,
MR MAHENDRA R SHAH for Respondent(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/07/2007

ORAL JUDGMENT

By way of this application u/s 482 of Criminal Procedure Code, the applicant,- original accused has prayed for an appropriate order to quash the complaint being C.R. No.46/07 registered with Ghatlodiya Police

Station.

2. That the opponent No.1, - original complainant availed a credit facility for a two-wheeler loan and he entered into an agreement with the applicant. That in pursuance to the above mentioned loan facility availed by the respondent No.1, finance was advanced. Thus, two-wheeler bearing registration No.GJ-1-FA-3455 of Hero Honda Passion Plus make was thus financed by the applicant Bank and the lien of the Bank was recorded in the RTO records. It appears that the opponent No.1, - original complainant defaulted in making the installment and therefore, a demand notice was issued on 4-9-06 in pursuance to a legally enforceable contract between the applicant Bank and the opponent No.1 herein. That thereafter also as there was default in regular repayment of the loan, a legal notice was already issued on 14-2-06 and the opponent No.2 herein was given a period of 7 days. Since the amount were not regularly paid, instructions were given to the agency for repossession of the vehicle and it is the case of the applicant that even intimation prior to taking the possession of the vehicle was given to the police authorities and that thereafter, the possession of the said vehicle was taken over by the applicant with full intimation and knowledge to the original complainant. That thereafter, the opponent No.1 herein filed the impugned complaint on 3-3-07 with Ghatlodiya Police Station for the offence punishable u/s 379 of the IPC. Therefore, the petitioner has preferred the present application u/s 482 of the Criminal Procedure Code to quash the impugned complaint as no offence u/s 379 of the IPC is made out against the applicant and that the possession of the vehicle was taken over by the company as the opponent No.1 herein, - original complainant did not perform his part of the contractual

obligation. Today, when the matter is called out, Shri Abhichandani, learned advocate appearing on behalf of the applicant as well as Shri Mahendra R. Shah, learned advocate appearing on behalf of the opponent No.1, - original complainant have jointly submitted that parties have settled the dispute amicably and the possession of the vehicle in question has been handed over to the opponent No.1 herein and it is submitted on behalf of the opponent No.1 herein that he does not want to proceed further with the complaint in question.

3. Apart from the above and even considering the decision of this Court in the case of **Digvijay Kushwaha and Anr. V. Ketan M. Mehta** dated 19-7-2005 in Criminal Misc. Application No.6016 of 2006 as well as the other decision and as well as considering the fact that there was a hypothecation agreement entered into between the opponent No.1 herein and the applicant and under which the opponent No.1 herein was required to repay the loan by installments as there were defaults in the replayment of the installments and the prior intimation and full knowledge of the opponent No.1, the possession was taken over, it cannot be said that there is any case made out against the applicant for the offence punishable u/s 379 of the IPC. Considering the overall facts and circumstances of the case as well as considering the agreement entered into between the parties, the opponent herein does not want to proceed further with the impugned complaint and to continue the criminal proceedings of the aforesaid complaint would be unnecessary harassment to the parties. Under the circumstances and in the peculiar facts and circumstances, the impugned complaint requires to be quashed and set aside.

4. For the reasons stated above, the petition succeeds.

The impugned complaint being C.R. No.46/07 registered with Ghatlodiya Police Station is hereby quashed and set aside. Rule is made absolute.

(M.R. Shah, J.)

shekhar/-